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IN THE
COURT OF APPEALS OF INDIANA

JAMES D. WOODY,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A04-0609-CR-538
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0605-FC-87451

April 25, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Appellant-Defendant James D. Woody ("Woody") appeals his four-year sentence for Operating a Motor Vehicle While Privileges Forfeited for Life, a Class C felony.[1] We affirm.

Issue

Woody raises the issue of whether his sentence is inappropriate.

Facts and Procedural History

On May 15, 2006, Officer Russell Growe ("Officer Growe") noticed a dark-colored Chevy Blazer driving at a high rate of speed that subsequently "ran the automatic signal at the entrance to the Indianapolis Zoo." Appellant's Appendix at 14. Officer Growe activated his emergency lights, attempting to stop the Blazer to no avail. Although the driver of the Blazer, later identified as Woody, turned his head to see the patrol car, he continued to travel through downtown Indianapolis at speeds between sixty and seventy miles per hour. After turning on to Ray Street, the Blazer crashed into a gate. Woody then exited the vehicle and ran from Officer Growe who ordered Woody to stop.

Based on Officer Growe's call to dispatch during the car chase, other officers, including a canine unit, established a perimeter around the immediate area where Woody's vehicle stopped. Woody was finally apprehended by the police canine. Woody sustained bite wounds on both ankles from the police dog. A medic was called to tend to Woody's bite wounds.

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[1] Ind. Code § 9-30-10-17.

The State charged Woody with Operating a Motor Vehicle While Privileges Forfeited for Life, a Class C felony, and two counts of Resisting Law Enforcement,[2] one as a Class D felony and one as a Class A misdemeanor. Woody entered into a plea agreement, agreeing to plead guilty to the operating charge in exchange for the dismissal of the Resisting Law Enforcement charges. The plea agreement capped the total possible sentence at four years.

On August 17, 2006, the trial court accepted the plea agreement and entered judgment accordingly. On August 30, 2006, the trial court sentenced Woody to four years imprisonment. The trial court found Woody's guilty plea as a mitigating factor, but declined to find that the injuries Woody sustained from the police dog as mitigating despite the suggestion by defense counsel. As an aggravating circumstance, the trial court found Woody's criminal history to be extensive and repetitive of driving convictions, noting further that Woody was on parole for a 2003 conviction for the same offense at the time of the current offense. The trial court found the aggravator to outweigh the mitigator in imposing the four-year sentence. Woody now appeals.

Discussion and Decision

Woody contends that his sentence is inappropriate. Specifically, he argues that the trial court should have found Woody's injuries from the police dog to be a mitigating factor and suspend two years of his sentence. Pursuant to Indiana Appellate Rule 7(B), he seeks revision of his sentence.

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[2] Ind. Code § 35-44-3-3.

Woody committed this offense under the current "advisory" sentencing scheme. Under this relatively new scheme, this court has split on the issue of whether a sentencing statement is required to explain the reasons for a trial court imposing a sentence. Compare Fuller v. State, 852 N.E.2d 22, 26 (Ind. Ct. App. 2006), trans. denied (holding a trial court is under no obligation to find or weigh any aggravating or mitigating circumstances) with McMahon v. State, 856 N.E.2d 743, 749 (Ind. Ct. App. 2006) (holding a trial court must issue a sentencing statement any time it deviates from the advisory sentence). We are awaiting guidance from our supreme court as to how, precisely, appellate review of sentences under the "advisory" scheme should proceed. See Gibson v. State, 856 N.E.2d 142, 146-47 (Ind. Ct. App. 2006).

Whether or not sentencing statements are required, this court has agreed that such statements are very helpful to this court in determining the appropriateness of a sentence under Indiana Appellate Rule 7(B). Id. at 147. Here, the trial court did issue a sentencing statement in imposing the advisory sentence of four years, and we will utilize it "as an initial guide to determining whether the sentence imposed here was inappropriate." Id.

In imposing the sentence, the trial court found in aggravation that Woody has an extensive criminal history of operating vehicles while intoxicated graduating to being found a habitual traffic offender. The trial court also noted that Woody was on parole for a conviction of Operating a Motor Vehicle While Privileges Forfeited for Life at the time of the current offense. Although Woody's injuries from the police dog were touted as a mitigating factor, the trial court declined the invitation to find so and instead determined that

Woody's guilty plea was the only mitigator. In weighing the factors found, the trial court held that the aggravator outweighed the mitigator because the mitigator held little weight in light of Woody's extensive criminal history.

On appeal, Woody argues that his sentence is inappropriate because the trial court did not find his injuries from the police dog to be a mitigating circumstance. He suggests that in light of his injuries, two years of his sentence should be suspended. A trial court is not required to find mitigating factors or to accept as mitigating the circumstances proffered by the defendant. Gray v. State, 790 N.E.2d 174, 178 (Ind. Ct. App. 2003). Furthermore, the trial court noted that it declined to find Woody's injuries as a mitigating circumstance "without knowing more of the facts and hearing the State's side of that same set of facts." Trial Transcript at 23. Woody also does not cite to any authority finding injuries incurred by defendants to be a possible mitigating circumstance.

Having reviewed the trial court's statement as a basis to begin our analysis, we now turn our attention to whether Woody's sentence is inappropriate under Indiana Appellate Rule 7(B). Indiana Appellate Rule 7(B) provides that we "may revise a sentence authorized by statute if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender."

Regarding the nature of the offense, Woody operated a vehicle while his driving privileges were forfeited for life, leading police on a high-speed chase through downtown Indianapolis. Then, after crashing his car into a gate, Woody led the police on a foot chase. While being pursued on foot, Woody failed to comply with the commands of the police to

stop and, as a result, sustained injuries when he was ultimately apprehended by the police dog.

As to Woody's character, Woody's extensive criminal history involving similar conduct demonstrates his repeated failure to comply with the law and his indifference to putting other people in danger by repeatedly driving while intoxicated. Woody offers no reasons other than his injuries as to why his character and the nature of the offense warrant a lesser sentence. Woody has not demonstrated that his sentence is inappropriate.

Affirmed.

SHARPNACK, J., and MAY, J., concur.